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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/550,693	04/17/2000	Michael Cole	602-1479	1244

7590 06/19/2003

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EXAMINER
MANOHARAN, VIRGINIA

ART UNIT	PAPER NUMBER
1764	11

DATE MAILED: 06/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.	Applicant(s)
09/550 693	COLE, MICHAEL
Examiner	**Art Unit**
Virginia Manoharan	1764

Office Action Summary

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 22-32 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 22-32 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
4) ☐ Interview Summary (PTO-413) Paper No(s) _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other

Claims 22-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. It is unclear how a "condensing device" is used "for absorbing or extracting solvent vapor" ? The functions of absorbing and extracting are normally perform by an absorber and extractor respectively, two known different unit of operations. A condenser function for heat- exchanging purposes i.e., changing a vapor phase to a liquid phase.

b. There are no proper antecedent basis for supports in the claims for the following recitations:

1. "... The recirculating system", recited in claims 25 and 29;

2. "... The manifold ",recited in claim 32; and

3. "... The condensing or absorbing device" in claim 32, i.e., the "or" clause is not initially recited in the base claim.

c. Claims 30-32 are incomplete claims as they depend on a cancelled claim 9.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made

Claims 22-26 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stothers or Yamazaki in view of Doi et al.

The above references are applied for the same combined reasons as set forth at page 4 of the previous office action.

Claims 27 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed March 19, 2003 have been fully considered but they are not persuasive.

Applicant's following arguments such as:

"... Yamazaki describes, a process for refining a reactive gas for use in forming a semiconductor layer. Such a process is in a totally different field from that of the present invention, which involves evaporating a volatile solvent in a container within a sealed environment containing an inert gas, particularly where the container is mounted in a vortex evaporator, as claimed in claim 27. There is absolutely no reason why the ordinary skilled worker in centrifugal evaporation would ever research such a field ....

... Stothers is likewise in a different field, being concerned with separating impurities such as propane and CO_2 from natural gas. No reference can be found of evaporating a solvent in an inert gas environment, as herein claimed. Again, there is no reason why the ordinary skilled worker in the field of centrifugal evaporation would research this field and were they to do so, arrive at the invention as claimed by using the teaching of Stothers....

... Doi discloses a suction pipe whose end 5 is close to the surface of a solvent 29. This feature is not relevant to claim 22 onwards. Therefore, combination of the teaching of Doi with either Yamazaki or Stothers would add nothing to those references, at least insofar as the claimed

invention as set forth in claims 22 through 32 ..." are not persuasive of patentability for the following reasons:

Contrary to applicants' assertion, Yamazaki or Stothers are deemed to be in the same field as the present invention. Each suggests an apparatus having a -sealed environment and containing an inert gas involving an evaporation/distillation process as in the claimed invention. See e.g., col. 10, lines 29-35 of Stothers and at col. 7, lines 22-31 and col. 8, lines 26-29 of Yamazaki. Furthermore, the argued "process" above is of no patentable moment. A process limitation is not the basis for patentability of an apparatus claim. Moreover, the argument that the container is mounted in a vortex evaporator is of not considered well-taken. The "vortex evaporator" is not even recited in the independent claim 22 such that it must not be important to applicants' invention? Likewise, the argument with regards to "centrifugal evaporation" is not considered well-taken as it is not commensurate with the scope of the claimed invention. It is a process limitation, whereas the claims are directed to apparatus. The claims are not also limited to the argued "centrifugal evaporation".

Furthermore and contrary to applicant's assertion, Doi is relevant in suggesting the "whereby" clause in claim 22. Note e.g., col. 6, lines 42-65.

Thus, in the absence of anything which may be "new" or "unexpected result", a prima facie case of obviousness has been reasonably established by the art and has not been rebutted.

Unexpected results must be established by factual evidence. Mere arguments or conclusory statements in the specification, applicants' amendments, or the Brief do not suffice. In re Lindner, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972). In re Wood, 582, f.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Borzio et al discloses an apparatus for gas transfilling between containers.

b. Witschi and Oesch et al both disclose an arrangement for separating fluid mixtures.

c. Burger discloses an apparatus wherein low-boiling solvent is circulated in the apparatus.

d. Bjorkman discloses a vacuum apparatus.

e. Parkinson et al discloses a solvent evaporator apparatus.

f. Yoder disclose an apparatus wherein the vacuum is ? periodically.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virginia Manoharan whose telephone number is 703-308-3844. The examiner can normally be reached on Tuesday-Friday from 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 703-308-4311. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9462 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

V. Manoharan/mn
June 18, 2003